

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **FOR THE DISTRICT OF NEW JERSEY**

3       **IN RE:   VALSARTAN, LOSARTAN,                   CIVIL ACTION NUMBER:**  
4       **and IRBESARTAN PRODUCTS                   1:19-md-02875-RMB-SAK**  
5       **LIABILITY LITIGATION                   Case Management Conference**  
6       \_\_\_\_\_ **via Teams videoconferencing**

7       Mitchell H. Cohen Building & U.S. Courthouse  
8       4th and Cooper Streets  
9       Camden, New Jersey 08101  
10      Friday, January 31, 2025  
11      Commencing at 9:59 a.m.

12       **B E F O R E:                   THE HONORABLE RENÉE MARIE BUMB, CHIEF**  
13                                   **UNITED STATES DISTRICT JUDGE, and THE**  
14                                   **HONORABLE THOMAS I. VANASKIE (RET.),**  
15                                   **SPECIAL MASTER**

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(Appearances continued onto next page.)

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Renée Marie Bumb, Chief Judge

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Matt Morrison, Esquire, on behalf of the Suits case

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1 (PROCEEDINGS held via Teams videoconferencing before  
2 the Honorable Renée Marie Bumb, Chief United States District  
3 Judge, and the Honorable Thomas I. Vanaskie (Ret.), Special  
4 Master, at 9:59 a.m. as follows:)

5 CHIEF JUDGE BUMB: Hello, Judge Vanaskie.

6 JUDGE VANASKIE: Hello, Judge Bumb. How are you?

7 CHIEF JUDGE BUMB: I'm good. How are you?

8 JUDGE VANASKIE: Pretty good. Thanks.

9 CHIEF JUDGE BUMB: Where is everybody else?

10 JUDGE VANASKIE: They're there.

11 How many people do we have on right now, John?

12 (Discussion was held off the record.)

13 CHIEF JUDGE BUMB: Okay. I'm going to stay quiet.

14 Judges Vanaskie, let me know when you need me. I'm here. I'm  
15 listening.

16 JUDGE VANASKIE: Well, all right. I will. And just  
17 give it another minute or two and then we'll get started.

18 I have 9:59.

19 We have Larry MacStravic on, so we're all set.

20 All right. Good morning, everyone. We'll get  
21 started with our case management conference. Judge Chief Bumb  
22 is on the call and we'll call upon -- she'll preside as  
23 appropriate. And interrupt any time, Chief Judge. And we'll  
24 get started.

25 Who will be the spokesperson for the plaintiffs?

1 MR. SLATER: Good morning, Your Honor. Adam Slater  
2 and Daniel Nigh, and potentially other people will speak as  
3 well depending on the issues that arise.

4 JUDGE VANASKIE: All right. Very well. And who will  
5 be the spokesperson for the defense?

6 MR. HARKINS: Good morning, Judge. This is Steve  
7 Harkins with Greenberg Traurig for the Teva defendants. Myself  
8 and Mr. Ostfeld will be handling the discussions for Teva.  
9 Other counsel will be speaking on separate issues. I know  
10 Mr. Lavelle for Aurobindo; Mr. Stoy for the Mylan defendants;  
11 and then to the extent there are the ZHP-specific issues,  
12 counsel for Skadden will be handling.

13 JUDGE VANASKIE: All right. Very well. Thank you.

14 All right. So let's get started. I have your agenda  
15 letters, and I'm going to follow the order that's in the  
16 plaintiffs' agenda letter, which is ECF No. 2967. And the  
17 first issue on that letter was an update on ZHP certificates of  
18 analysis, material safety data sheets.

19 So what's the update on that? Mr. Slater, is it your  
20 matter?

21 MR. SLATER: Yes. Yes, Your Honor.

22 We have been trying to work through this issue. And  
23 I had asked for really a deadline of today to either have it  
24 worked out or ask for a briefing schedule. But I believe we  
25 made some progress the other night that got us to the point

1 where we have some hope that we may be able to work out a  
2 stipulation rather than having to file a fairly extensive  
3 motion. So we're willing to work with ZHP for a short period  
4 to try to see if their client is willing to come to where we  
5 are trying to get them. And if we're able to do that, it's  
6 probably, you know, it will avoid motion practice. If we  
7 can't, we'd want to be able to report to Your Honor and set a  
8 briefing schedule.

9 JUDGE VANASKIE: All right. And how much time do you  
10 think you need to get this worked out?

11 MR. SLATER: I would like to believe a short amount  
12 of time. But I've been told by ZHP that it's the Chinese New  
13 Year or something and that may delay their ability to get an  
14 answer, but they're working on it. So perhaps ZHP can tell  
15 you.

16 We would like to think a week, but I'm not sure if  
17 they can commit to a week.

18 JUDGE VANASKIE: Mr. Ostfeld, are you going to  
19 address this issue?

20 MS. DAVIDSON: Your Honor, I think that would be us,  
21 ZHP, not Teva.

22 JUDGE VANASKIE: Okay. Jessica. I'm sorry. That  
23 will be the last time I do that.

24 MS. DAVIDSON: I think what Adam said is accurate,  
25 which is that the Chinese really know how to celebrate a new



1 year much better than we do, and everybody is out of their  
2 office for about ten days. So I think we do need a bit more  
3 time, and I don't know, Nina, if there's anything to add to  
4 that.

5 JUDGE VANASKIE: All right.

6 MS. ROSE: No, that's it. We are working with our  
7 client, and I believe they're back on the 6th of February, and  
8 we should be able to have something to Plaintiffs shortly after  
9 that.

10 JUDGE VANASKIE: So if we gave you till the 11th of  
11 February, is that enough time?

12 MS. ROSE: I think that should be sufficient, Your  
13 Honor.

14 JUDGE VANASKIE: All right. So I'd like a letter  
15 report by February 11th on where this stands and whether we're  
16 going to need motion practice or not.

17 And what I'd suggest is that if you can't work it  
18 out, propose a schedule that I can promptly issue, but we'll  
19 give you till February 11th to let us know.

20 MR. SLATER: Thank you, Your Honor.

21 MS. DAVIDSON: Thank you, Your Honor.

22 MS. ROSE: Thank you, Your Honor.

23 JUDGE VANASKIE: The next issue on the plaintiffs'  
24 agenda letter had to deal with update on ZHP document retention  
25 policies.

1           And the parties were continuing to meet and confer.  
2       Where does that stand right now, Mr. Slater?

3           MR. SLATER: It's in the same place. And we don't  
4       have anything to tell the Court right now substantively. I  
5       don't think there's anything for the Court to do. We're going  
6       to continue to speak to ZHP, hopefully work through the open  
7       questions and be able to stipulate through that or determine  
8       whether that's even needed. We've been focusing, candidly, on  
9       the certificate of analysis issue because it's very  
10      fundamental. And this one's been sort of on the back burner,  
11      to be honest with you.

12           So we can certainly report back by the next  
13      conference with the Court. I don't think it's that pressing,  
14      and it's our issue so we're certainly not asking for any  
15      briefing on that yet.

16           JUDGE VANASKIE: Okay. So we'll defer that till the  
17      next conference, and we'll talk about the scheduling of the  
18      next conference shortly.

19           MR. SLATER: Thank you.

20           JUDGE VANASKIE: The next item are the DFS  
21      deficiencies for Roberts. That's the first case selected for  
22      trial.

23           Where does that stand right now?

24           MR. SLATER: We made a lot of progress the other  
25      night with that issue, Your Honor. To give you a very simple

1 summary of it, we're working to establish what the  
2 contamination levels are in the actual pills that were taken by  
3 Mr. Roberts. And there were some issues we needed to talk  
4 through with ZHP. And through the discussion the other night  
5 and some supplements that they previewed to us, we think that  
6 we've identified some further steps that may be able to be  
7 taken to further specify those levels. So there's nothing for  
8 the Court to do on that yet. But we need to move quickly on it  
9 because our specific causation experts will need to have that  
10 issue resolved in order to issue the reports. So we're working  
11 as fast as we can.

12 And we may be making some requests of some -- of the  
13 wholesalers in the next day or so for some information they may  
14 have with regard to what they can tell us about who actually  
15 sold to the specific pharmacy in Alabama and what they know  
16 about the pills.

17 There's coding that goes with those pills that might  
18 help ZHP to give more specific information about what actual  
19 contamination levels would have been at issue with those actual  
20 pills. So we probably will be getting that request out, I  
21 would hope, by the end of today. And it won't be complicated.  
22 It would be just ask the wholesalers, who sold to this -- it's  
23 one pharmacy. It's not a chain pharmacy. It's a specific  
24 pharmacy in a town, and we're going to probably ask them to  
25 take a look and see who sold those pills to that pharmacy and

1 whatever data they have about what they sold, to give to us,  
2 and we're hoping it will be helpful.

3 We're also going to approach and have been  
4 approaching the pharmacy itself to see if they have any further  
5 information. And then ultimately when we've exhausted those  
6 efforts, we're going to reach an agreement with ZHP, hopefully,  
7 as to what the contamination levels are or at least what the  
8 reasonable narrowed range is, and then we'll be able to provide  
9 that to our experts.

10 JUDGE VANASKIE: All right. Any response from ZHP?

11 MS. ROSE: No, Your Honor. I think that sums it up.  
12 We are in the process of providing Plaintiffs with all the  
13 information that we have. We should be able to get that to  
14 them we think within the next week or so, and then it's our  
15 understanding there might be some other information in the  
16 possession of other defendants, so we're moving forward.

17 JUDGE VANASKIE: And when you said coding issues,  
18 C-O-D-I-N-G?

19 MR. SLATER: Yes.

20 JUDGE VANASKIE: Okay.

21 MR. SLATER: Yes.

22 JUDGE VANASKIE: Coding, sorry.

23 And do I have it right that your expert report  
24 deadline is February 28th?

25 MR. SLATER: Yes.

1 JUDGE VANASKIE: Okay. And so you think you can  
2 accomplish all that?

3 MR. SLATER: We're intending to.

4 JUDGE VANASKIE: Okay.

5 MR. SLATER: I mean, I can tell you because we would  
6 like to have a specific information and an understanding with  
7 ZHP of what we're both going to agree is the quantification.  
8 Whether we can be specific or it's a range, we're working with  
9 ZHP, and so far they've agreed let's not make this an issue  
10 that we're actually trying because it's something we should be  
11 able to work out.

12 And the significance of it is we just want to be able  
13 to know what the range is. Even the lower end of the range is  
14 still significant from our perspective. So it's not that we're  
15 concerned that the range may be lower than is actionable. It's  
16 just that we're trying to avoid taking up time at trial dealing  
17 with something that we think the parties should be able to work  
18 out as best we can cooperatively and to come to an  
19 understanding of exactly what the data shows.

20 JUDGE VANASKIE: Okay.

21 MR. SLATER: So you understand what it is, there's  
22 API lots and then multiple API lots get into finished-dose  
23 lots. The finished-dose lots that go into the NDC codes, it's  
24 not just one finished dose. So this finished dose may have had  
25 a hundred parts per million, this finished dose may have had

1 20, this may have had this, may have had that. There's ranges.  
2 And there's a whole bunch that are combined into these larger  
3 bottles that covered -- that one NDC code encompasses. And the  
4 ability to get it down to what the exact number is has been a  
5 challenge. We're trying to figure out weighted average  
6 calculations and we're trying to come up with something that  
7 both sides can agree is a reasonable estimate or approximation,  
8 or best would be the exact numbers. But that's what we're  
9 working through. And we really don't think it's something that  
10 should be a tried issue. We think it's something the parties  
11 should be able to work out because it's basically based on  
12 objective data.

13 JUDGE VANASKIE: Okay. All right. So you'll let us  
14 know at the next -- I expect it's going to get resolved very  
15 shortly because your expert witness deadlines are coming up.

16 MR. SLATER: Yes. And we'll give you an update as  
17 soon as we have something definitive to say. And we obviously  
18 have a deadline that we're working on. So we have a lot of  
19 incentive to move through this quickly.

20 JUDGE VANASKIE: Okay.

21 MR. SLATER: And ZHP has been cooperative since we  
22 raised it. ZHP has been working with us on this. So we're  
23 hopeful that we can continue to work that way and get through  
24 this issue.

25 JUDGE VANASKIE: That's good to hear.

1 All right. Can we move to the next issue then,  
2 revised deposition designations.

3 MR. SLATER: Yes, Your Honor.

4 JUDGE VANASKIE: Where does that stand?

5 MR. SLATER: Our concern is that we -- I know you  
6 remember these witnesses. Really, the most extensive witness  
7 that we needed to edit the designations that Your Honor had  
8 ruled on previously for was Min Li, because now we're  
9 incorporating general causation. And for some of the witnesses  
10 there may be some testimony that relates to what a consumer  
11 would have thought as opposed to an insurance company or a TPP  
12 because it's obviously a different context.

13 We sent those edits that we did for Min Li in October  
14 to ZHP and have not received a response. We're concerned  
15 because we have others that we're working on and we'd like to  
16 have some sort of order that if we serve edits, that we'll get  
17 a response within, for example, ten days. If there's a  
18 problem, they can let us know.

19 The other witnesses, we don't expect them to be as  
20 extensive as Min Li, and we believe that could have been  
21 responded to more quickly. But there's nothing we're looking  
22 for by way of relief or to punish anybody, but going forward we  
23 would like to have a ten-day turnaround on what we serve so we  
24 can move through it more quickly and figure out if there's  
25 anything the Court needs to look at.

1 JUDGE VANASKIE: All right. Who, Jessica or Nina,  
2 who's addressing this?

3 MS. DAVIDSON: I can address it briefly, Your Honor.

4 We're currently really focused on the treater  
5 depositions. And we have a deposition designation deadline of  
6 May, whereas we have a fact discovery close that's much sooner.  
7 So we will get to the deposition designations as soon as we're  
8 done with the treater depositions and we'll get those back to  
9 Adam promptly.

10 JUDGE VANASKIE: But can you give me dates?

11 MS. DAVIDSON: End of February.

12 If we get those done by the end of February, that  
13 leaves plenty of time for the other deposition designations  
14 long before our deadline of May, so I think that should work.

15 JUDGE VANASKIE: So you're suggesting end of February  
16 for the treater designations?

17 MS. DAVIDSON: End of February for Min Li, for the  
18 deposition designations for Min Li, and then we can follow this  
19 ten-day proposal going forward from there. We just -- right  
20 now, the next two weeks are really busy with treater  
21 depositions.

22 JUDGE VANASKIE: All right. Thank you.

23 Mr. Slater.

24 MR. SLATER: We have time, but the time's going to go  
25 quickly, and we're just concerned because it's been over three



1 months. And there's no reason why -- when we originally did  
2 this, the understanding was this was going to be a rolling  
3 process so we could knock them out as we went. We didn't  
4 anticipate that the first step would be delayed for three  
5 months.

6 If that's going to be the case, then we would just  
7 want something that says that the defendants need to respond  
8 when we serve amendments or modifications quickly because we're  
9 not going to want to drag this down to the end of April. It  
10 just doesn't seem reasonable to have squandered so much time  
11 already and then have a deadline that's going to become a  
12 pressure situation when it didn't need to be.

13 MS. DAVIDSON: So, Your Honor.

14 JUDGE VANASKIE: Go ahead.

15 MS. DAVIDSON: We're not squandering time. We're  
16 just trying to prepare for trial in the ordinary course. And  
17 as I indicated, fact discovery is closing. We'll get this done  
18 at the end of February, and I can personally commit that we'll  
19 respond promptly and work very well with Adam on getting the  
20 depo designations done after that.

21 JUDGE VANASKIE: So if we set a ten-day deadline  
22 after Min Li's designations are made so you get new  
23 designations, you'll respond within ten days?

24 MS. DAVIDSON: Yes, sir.

25 JUDGE VANASKIE: All right. Put that in an order.

1           So we'll have Min Li by the end of February, and then  
2     after that, on a rolling basis, the defense will have -- or ZHP  
3     will have ten days to respond to your revised designations, I  
4     take it.

5           MR. SLATER: That's great, Judge. Thank you. And  
6     it's obviously not every witness. And it's going to be  
7     selective on a lot of the witnesses. I don't expect it to be a  
8     giant amount of changes.

9           JUDGE VANASKIE: Right.

10          MS. DAVIDSON: Thank you, Your Honor.

11          JUDGE VANASKIE: Thank you.

12          The next item I had was the plaintiff fact sheet,  
13     order-to-show-cause process, and you want that reinstated.  
14     That was set forth in Case Management Order No. 16, ECF 249. I  
15     don't see any reason why that should not be reinstated. It's a  
16     matter for Chief Judge Bumb, and she's giving the thumbs up.  
17     So we will do that.

18          Now, I will say, while I would like to do this on the  
19     last Friday, I have a conflict on the last Friday of February.  
20     I have a mediation that's been scheduled to occur in Miami the  
21     27th and 28th of February. So we'll have to pick another date  
22     for that one. And then we'll have this reinstatement of the  
23     show-cause process for that conference.

24          CHIEF JUDGE BUMB: You want to pick the date now,  
25     Judge?

1 JUDGE VANASKIE: Yeah. What do you have available,  
2 Chief Judge?

3 CHIEF JUDGE BUMB: You want to just do it the day  
4 before?

5 JUDGE VANASKIE: I can't do it the day before. I  
6 could do it two days before, the 26th.

7 CHIEF JUDGE BUMB: Okay.

8 JUDGE VANASKIE: It's a scheduled two-day mediation,  
9 so I'll be in Florida the 27th and 28th, but I could do it the  
10 26th.

11 CHIEF JUDGE BUMB: I can't. What about the 3rd,  
12 Monday?

13 JUDGE VANASKIE: I could do it the 3rd. The 3rd of  
14 March?

15 CHIEF JUDGE BUMB: Yeah. Anybody -- conflict for  
16 anyone else?

17 (No response.)

18 CHIEF JUDGE BUMB: Okay.

19 MR. SLATER: If we could do it at the same time, that  
20 would be great.

21 JUDGE VANASKIE: What do you mean the same time?

22 MR. SLATER: Meaning --

23 CHIEF JUDGE BUMB: 10 o'clock.

24 MR. SLATER: Yes.

25 JUDGE VANASKIE: Yeah, sure.

1 CHIEF JUDGE BUMB: Okay.

2 MR. SLATER: Okay.

3 JUDGE VANASKIE: Okay. Done.

4 MR. NIGH: Your Honor, can I make one request on the  
5 PFSSs?

6 JUDGE VANASKIE: Sure.

7 MR. NIGH: If we can get the list in the next two  
8 weeks, just because there's been such a gap from the last time  
9 we had a list. That way we have enough time before that  
10 hearing.

11 JUDGE VANASKIE: All right. So what are you  
12 suggesting, Daniel?

13 MR. NIGH: That we get a list from the defendants in  
14 the next two weeks.

15 JUDGE VANASKIE: Is that doable?

16 MR. HARKINS: Yeah. Your Honor, apologies, our  
17 practice has been to submit a list informally for Plaintiffs'  
18 Leadership Counsel to distribute some amount of time before  
19 each of the case management conferences. Given the likely  
20 lengthy list, we're happy to do that within the next two weeks.

21 JUDGE VANASKIE: All right. So by the 14th of  
22 February. All right.

23 MR. NIGH: Thank you.

24 JUDGE VANASKIE: Anything else on that matter, on the  
25 show-cause process?

1 MR. HARKINS: Your Honor, the only other thing --

2 MR. SLATER: And the plaintiffs have no objection.

3 MR. HARKINS: Apologies, Your Honor.

4 The only other item just to raise logistically, we  
5 previously coordinated with Ms. Smith, Loretta Smith, on  
6 effectuating the eventual orders. Is there someone else who  
7 should serve as the primary point of contact to the extent  
8 there are any questions after each of the hearings as to which  
9 cases are moving forward?

10 JUDGE VANASKIE: Judge Bumb, is that Clarissa?

11 CHIEF JUDGE BUMB: That's going to be -- that's my  
12 career law clerk, Clarissa Lintner. You should have -- she  
13 will -- what do you need, an email from her?

14 MR. HARKINS: I believe we have that. I just wanted  
15 to confirm if she was going to be stepping into that role.  
16 We're happy to --

17 CHIEF JUDGE BUMB: Yes. Yes, she is.

18 MS. LINTNER: That works. You can email me.

19 CHIEF JUDGE BUMB: Yeah.

20 JUDGE VANASKIE: Thanks, Clarissa.

21 All right. The next issue is product ID issue raised  
22 by the defendants. Who will be addressing this?

23 MR. HARKINS: I'll be addressing that as well, Your  
24 Honor.

25 And I understand that there is no, sort of, specific

1 objection to Plaintiffs from pursuing dismissals for lack of  
2 product ID, and we have agreed to continue to meet and confer  
3 over the next month to determine if a formal process is  
4 necessary. We've provided some background in our letter just  
5 to note that we have been informally undertaking this since  
6 2021. And while we have, for example, for Teva obtained  
7 dismissal voluntarily in over a hundred cases where there lacks  
8 product ID, we still have over 60 matters that despite multiple  
9 correspondences with Plaintiffs, adding Plaintiffs' Leadership  
10 to communications with the individual plaintiff's counsel,  
11 we're unable to get responses or unable to obtain dismissals.

12 We do feel like, similar to the PFS deficiency,  
13 order-to-show-cause process, some ability to bring these issues  
14 before the Court and obtain dismissal will very likely mean  
15 that we're able to resolve them without actually requiring the  
16 Court to enter an order. Our experience with the PFS  
17 deficiency process has been that there are few, if any,  
18 disputes that we're actually asking the Court to decide.

19 We'll return to this in a month after we continue to  
20 meet and confer with Plaintiffs. But we do feel that even  
21 though it may not need to be as regular or as formal as the PFS  
22 deficiency, order-to-show-cause process, some ability or some  
23 mechanism the plaintiffs -- that defendants can at least point  
24 to for bringing these issues to the Court would move this  
25 process along.

1 CHIEF JUDGE BUMB: Mr. Harkins, let me just jump in.  
2 Why not follow the same process? It seems to be working and it  
3 seems to help, you know, prune the matters. Why don't you just  
4 follow the same process?

5 MR. HARKINS: That is our proposal, Your Honor. We  
6 only, admittedly, raised this in a formal meet-and-confer with  
7 Plaintiffs this week. So they were hearing that proposal for  
8 the first time. And they had asked for us to give them another  
9 month to try and resolve this informally.

10 I very much suspect that at the end of the next month  
11 our position before the next case management conference is  
12 going to be the same; that we would like to implement that  
13 process. But we are willing to meet and confer with Plaintiffs  
14 if they think that they will be able to do this without  
15 implementing a formal process.

16 CHIEF JUDGE BUMB: Well, I think it should -- I mean,  
17 I think there should always -- I think it should follow the  
18 same process. Meet and confer, and if you can't work it out,  
19 then you would follow the same process that you do for the  
20 plaintiffs fact sheet. It seems to me that that process has  
21 worked well.

22 Why not follow that same process, Mr. Slater?

23 MR. SLATER: Your Honor, I think the question is more  
24 a question of timing and what the pre-steps will be before  
25 implementing it. This has been going on for a while informally

1 where leadership has worked with individual firms where Teva  
2 has actually been very on top of this in reaching out to law  
3 firms and saying, for example, in this case your pharmacy  
4 records don't document that our product was actually one of  
5 those that you purchased, please dismiss us. And we've worked  
6 with Teva and with the plaintiff firms that have been  
7 identified to try to get that done. And it's worked very well.

8 So we're not against having an end process where if  
9 it can't be worked out, they can come to the Court. We just  
10 want to work through what will be the steps before we get to  
11 that and what should be the timing. It may be something a  
12 little bit different in terms of timing than the order to show  
13 causes for the PFSSs. But we're not objecting to the Court  
14 being able to be the backstop.

15 CHIEF JUDGE BUMB: Okay. So it sounds like everybody  
16 is on the same page. You just want a little bit more time.  
17 But it would be my preference that we come up with a procedure,  
18 we follow it, and every time we have these conferences, if  
19 there's any issues that I need to rule on with respect to a  
20 particular case, we just rule on it and continue to -- I use  
21 the word "prune" -- prune the case.

22 MR. SLATER: Right.

23 MR. HARKINS: Right.

24 MR. SLATER: We agree, Your Honor. And I think we'll  
25 be able to work through this.



1 CHIEF JUDGE BUMB: Okay.

2 MR. HARKINS: Agreed.

3 JUDGE VANASKIE: Great.

4 The next issue I have are Wave 2 replacement cases.  
5 Now, I will say that after I received the letters, defense  
6 wants to be able to pick the two cases, because we're talking  
7 about two cases right now for trial.

8 CHIEF JUDGE BUMB: Judge Vanaskie, can I just  
9 interrupt you for a second?

10 JUDGE VANASKIE: Yes.

11 CHIEF JUDGE BUMB: I just wanted to get clarity on  
12 where we are with the plaintiffs' motion. I think that was the  
13 next -- did we jump over that one maybe?

14 MR. HARKINS: Are you referring to the common benefit  
15 fund motion?

16 CHIEF JUDGE BUMB: Yes.

17 JUDGE VANASKIE: Yeah. We didn't jump over that yet,  
18 but we can talk about that now.

19 CHIEF JUDGE BUMB: Did we not jump over it? I must  
20 be -- go ahead.

21 JUDGE VANASKIE: Well, I'm looking at the plaintiffs'  
22 letters.

23 CHIEF JUDGE BUMB: I'll keep quiet.

24 JUDGE VANASKIE: No, no, no. You interrupt any time.

25 CHIEF JUDGE BUMB: I just want to make sure that this

1 is continuing to get resolved, the motion.

2 JUDGE VANASKIE: Yes.

3 CHIEF JUDGE BUMB: The common benefit fund.

4 JUDGE VANASKIE: Right. So we'll take up this common  
5 benefit fund issue right now. And --

6 MR. SLATER: I could probably explain what the issue  
7 is, if you'd like.

8 JUDGE VANASKIE: Yeah. I think that would be  
9 helpful.

10 MR. SLATER: We were notified by the defendants, I  
11 think it was last week, that they had a couple of questions.  
12 They're not objecting to us seeking a common benefit process.

13 JUDGE VANASKIE: Right.

14 MR. SLATER: The one issue that I can recall from our  
15 discussion -- and they emailed us I think it was yesterday or  
16 the day before -- has to do with how will the defendant have  
17 notice that they're supposed to comply with that process, how  
18 do they know a case is within that process.

19 So I can't imagine that's not something we can work  
20 through with them to make sure there's language that will give  
21 them comfort that they're not going to have to hunt and peck to  
22 figure out whether or not a case comes within the scope of the  
23 order or not.

24 There may be other similar type of questions. I  
25 think there might have been two or three other little things

1 like that. But I think that was really the sum and substance  
2 of what the defendants' concern was, just to make sure they  
3 knew how to comply. If there's something else that I haven't  
4 read yet in their email, I'll certainly leave it to them, but  
5 that's my understanding of basically what the concern was on  
6 the defense side.

7 JUDGE VANASKIE: And who will be addressing this  
8 issue from the defense?

9 MR. KAPLAN: Judge Vanaskie, this is Andrew Kaplan  
10 for Defendant Cardinal Health who had the fortune of addressing  
11 this issue.

12 I think Adam is exactly on point. We're -- the  
13 defendants are not objecting to the concept of this. The  
14 proposed common benefit order imposes obligations on  
15 defendants, and we just want to make sure it's definitionally  
16 clear and there's no instance where Defendants are caught in  
17 between what they need to do.

18 So we proposed -- we raised the specific issues with  
19 some proposed solutions, and we're happy to meet and confer as  
20 quickly as possible with Adam and whoever else to get this  
21 resolved. And these sorts of issues have been resolved in  
22 other litigations. I don't anticipate it being an issue here.

23 JUDGE VANASKIE: All right. How much time do you  
24 need or want to resolve this issue and submit to us an  
25 agreed-upon order?

1 MR. SLATER: From our perspective, Your Honor, we  
2 don't want to change the motion schedule. So we want to get  
3 this done next week, frankly, if we can, by the end of the  
4 week. We don't think that that should be a challenge. If  
5 there's an issue we can't resolve, then we'd have to obviously  
6 submit it. But I'd like to think that we wouldn't have to  
7 disrupt the motion schedule, and I think it's on for the middle  
8 of February, the motion. I don't remember the exact date. I'm  
9 guessing around the 15th.

10 So we would like to make sure we get it done before  
11 that so the Court's not having to wait for us.

12 JUDGE VANASKIE: Mr. Kaplan?

13 MR. KAPLAN: I don't anticipate that being a problem.  
14 I'm happy to jump on the phone as soon as Adam is available,  
15 and we can alert the Court if we run into any issues.

16 JUDGE VANASKIE: All right.

17 CHIEF JUDGE BUMB: All right. Thank you, Judge  
18 Vanaskie. If it's worked out, then a new proposed consent  
19 order will be in order. Okay. Thanks.

20 JUDGE VANASKIE: Yeah. Great.

21 Let's get back to the Wave 2 replacement cases.

22 We have a pool left of four cases, as I understand  
23 it. I did use a random number generator on four cases and did  
24 select the Crawford and Weygandt cases for the next -- as  
25 replacement cases in Wave 2.

1           Now, I think the defense was going to propose  
2     Crawford anyway.

3           Now, I don't know where things stand with respect to  
4     Weygandt. But is there an objection to using those two as the  
5     replacement cases?

6           As I understand it, there are no more *Lexecon* issues  
7     for those two cases, and there's no issues with respect to  
8     downstream defendants, so they should be appropriate bellwether  
9     cases.

10          MR. HARKINS: Your Honor, if I might, for the  
11     manufacturer defendants at least on this, and I see Ms. Kapke  
12     has joined, and she may be able to address to the extent there  
13     are any outstanding issues with the downstream defendants.

14          I will say defendants were not going to propose  
15     Crawford as one of the two replacement cases. And to just sort  
16     of briefly outline what Defendants' goal here is, is, first, to  
17     ensure that when we get to the end of this year, when we have  
18     tried the first bellwether case, that the Court has an  
19     appropriate case that it can select for the Wave 2 bellwether  
20     pool.

21          Second, we want to make sure that the cases which are  
22     worked up over the next year are reasonably representative of  
23     the inventory in the litigation.

24          JUDGE VANASKIE: Right.

25          MR. HARKINS: When we began this process, both

1 parties selected and created a balanced bellwether pool with  
2 cases selected by plaintiffs and defendants, and there were  
3 actually two cases which were joint selections.

4 What has been referred to in Plaintiffs' letter as  
5 "strikes" by the defendants were exercises of *Lexecon* waivers  
6 across the board by defendants who have *Lexecon* rights in every  
7 single case. They were not exercised on an individual basis.  
8 And the end result of both the exercise of those rights or --  
9 and I caveat this because I know Aurobindo, as noted in their  
10 letter, has not specifically exercised their *Lexecon* rights but  
11 has identified an issue that might create a *Lexecon* waiver  
12 problem if it's not resolved. Those were done across the  
13 board.

14 The 17 cases which were removed involved both of the  
15 jointly selected cases, seven cases selected by Plaintiffs, and  
16 eight cases selected by Defendants.

17 At the end of that process, we still had a reasonably  
18 balanced pool with one additional plaintiff case versus defense  
19 cases in the potentially eligible pool.

20 We then had nine cases, after two more cases were  
21 identified, one defense case and one plaintiff case, which were  
22 removed because Plaintiffs determined that they were not  
23 willing to waive certain claims against Mylan -- Mylan  
24 obviously having indicated their intent to exercise *Lexecon*  
25 rights. The pool of eligible cases for Wave 2 was then four

1 defense cases and five plaintiff cases.

2 After selection by Your Honor of the additional five  
3 cases from that pool, we had in the Wave 1 bellwether pool  
4 Roberts, which has already been selected for trial, Plaintiffs'  
5 case hand selected by them to serve as the first bellwether.

6 At that point the pool involved two defense cases --  
7 I'm sorry, two plaintiff cases and three defense cases.  
8 Subsequently, Plaintiffs have indicated that they are not  
9 willing to waive *Lexecon* in two of the defense selections that  
10 were added to that pool.

11 Part of the problem with the remaining pool, from our  
12 perspective, Your Honor, is that it has now been narrowed so  
13 that the only two defendants who are going to be participating  
14 in Wave 2 are ZHP and Teva. That is it. There are no other  
15 manufacturer defendants in any of these cases. To the extent  
16 Plaintiffs have been asked to identify if they will dismiss  
17 downstream entities, they have done so across the board in  
18 every other case. These are going to be cases by the  
19 individual plaintiff against the manufacturers. Those  
20 manufacturers are just going to be ZHP or Teva. ZHP has  
21 already been selected to serve as the sole defendant in the  
22 first bellwether trial.

23 From Teva's perspective, the four remaining cases are  
24 not in fact a plaintiff case -- or a defense case and three  
25 plaintiffs' cases. There are only three plaintiffs' cases in

1 which Teva is involved. Teva is not involved in the Crawford  
2 case. Selecting them does not increase the potential for Teva  
3 to be involved in the Wave 2 bellwether pool.

4 Our goal is to identify a sufficient number of cases  
5 from plaintiffs' own selections for the bellwether pool so that  
6 at the end of this process, pending dismissals, motion practice  
7 or anything else that might remove those cases from the  
8 bellwether pool, if the Court so chooses to set the second  
9 bellwether pool trial as a ZHP and Teva case, it can do so.

10 Our concern is that we are now in a position where it  
11 is appearing that the case, given the selection method that has  
12 been employed, is overwhelmingly skewed in favor of cases  
13 chosen by plaintiffs.

14 However, we are not asking to reconstitute the pool.  
15 We are not asking to add additional defense picks to the pool.  
16 We are simply asking that we be permitted to select the Bonmon  
17 and Lee cases, which have been worked up, from among the three  
18 plaintiff picks for the bellwether pool and add those to  
19 Wave 2, which would provide a pool consisting of one defense  
20 pick and four plaintiff picks, but it would ensure that there  
21 are four cases potentially involving the Teva defendants in the  
22 Wave 2 bellwether pool.

23 JUDGE VANASKIE: All right. Mr. Slater.

24 MR. SLATER: This will be Mr. Nigh.

25 MR. NIGH: Your Honor, I'm going to be addressing



1 this.

2 JUDGE VANASKIE: Mr. Nigh.

3 MR. NIGH: Your Honor, I'm going to be addressing  
4 this, Daniel Nigh on behalf of the Plaintiffs.

5 This is the first time that we've heard Defendants'  
6 intention is that they wanted to pick the Bonmon and the Lee  
7 cases.

8 Before going into further argument on this, we had a  
9 couple other issues, but having heard that those are the two  
10 cases that they want to pick, can I have a few minutes to meet  
11 and confer with my co-counsel on that issue?

12 JUDGE VANASKIE: Well, you can have more than a few  
13 minutes. I'd like to get this done, though.

14 MR. NIGH: I do want to get it done, but that's the  
15 first time I've heard that those are the two cases that they  
16 want to pick. So we may be able to reach an agreement, but I  
17 haven't been able to speak to my co-counsel yet.

18 JUDGE VANASKIE: Well, can you get back to us by  
19 Monday?

20 MR. NIGH: Absolutely.

21 MR. HARKINS: And, Your Honor, if I might, I do think  
22 if Plaintiffs' counsel is amenable -- and I apologize for not  
23 being able to raise this earlier during our prior meet and  
24 confers. The only other thing I might add is given the number  
25 of cases in the bellwether pool and the fact that it is fairly

1 clear that the bellwether pool for the second Wave 2 is only  
2 going to involve these two defendants, now I don't pretend to  
3 know why Your Honor initially identified five as the  
4 appropriate number. But we do feel that if, for example, one  
5 of the plaintiffs in either Lee or Bonmon is unwilling to waive  
6 *Lexecon* and thereby reducing the pool, to the extent there are  
7 at least three or four Teva cases still in the pool, we feel  
8 that's sufficient to work it up. So we would prefer to have  
9 both of those two cases added. If only one of those cases can  
10 be added after waiver of *Lexecon*, we're still fine with  
11 proceeding with that. We don't feel that there is a need to  
12 add another Teva case to the bellwether pool at that time.

13 CHIEF JUDGE BUMB: Can I ask a question that maybe  
14 I'm -- I don't know -- maybe I'm missing something. If these  
15 are the cases picked by the plaintiff, what's the problem?

16 MR. NIGH: Well, Your Honor, there's a couple issues  
17 that are triggered. First off is, I still don't know that the  
18 plaintiffs in these individual cases would be willing to waive  
19 *Lexecon*. That's an individual discussion that has to be had  
20 with that plaintiff. The decision for -- you know, just to  
21 give you an example, I have two cases --

22 CHIEF JUDGE BUMB: So at the time you selected the  
23 cases, you hadn't made that initial inquiry?

24 MR. NIGH: We have not, no. And they -- and they --  
25 it's been that we haven't selected cases. We just had -- we

1 can't -- we got down to nine cases because those are the cases  
2 that didn't have a subject matter jurisdiction argument and  
3 they didn't have an Aurobindo or Mylan waiving *Lexecon*  
4 argument. That's it. That's how we got down to nine. All the  
5 rest of the cases dropped out of the 28. And that's what got  
6 us to nine.

7 But just along those lines, I mean, when I have a  
8 conversation, I've had two of my clients that have waived  
9 *Lexecon*. It's a personal issue to make a decision. These are  
10 people who are battling with cancer treatment and/or they're  
11 widows or widowers who have their own health concerns and they  
12 have to make a decision as to whether or not their -- they want  
13 to be there in court. They want to be at trial. They want to  
14 be able to sit there and have their day in court, but they have  
15 to make a decision as to whether or not to travel from Alabama  
16 up to New Jersey or --

17 CHIEF JUDGE BUMB: No. I --

18 MR. NIGH: -- from Louisiana to New Jersey. So  
19 that's all. We just have to have conversation first, though,  
20 Your Honor.

21 CHIEF JUDGE BUMB: And I totally appreciate it. It  
22 just seemed to me that it would have been more logical to have  
23 those conversations before you quote-unquote picked them.  
24 Because now when I read the submissions, it seems like what the  
25 defendants are saying is there's a lot of -- I don't want to

1 call it "gamesmanship" or whatever going on. It just would  
2 have seemed to be more efficient to have those conversations  
3 before you quote-unquote picked them. But maybe I'm missing  
4 something.

5 But okay. Well, you'll talk to your clients in these  
6 two cases and see if they will waive *Lexecon*, okay.

7 MR. NIGH: And, Your Honor, I would just -- I think  
8 there's a difference in our interpretation of what's happened.  
9 The cases have not been picked. They have just been narrowed  
10 from 28 to nine based on Aurobindo and/or Mylan being in the  
11 case where they have refused to waive *Lexecon*. I know  
12 Aurobindo's argument that they put strings on, we will only  
13 waive *Lexecon* if you do X, Y, and Z, so...

14 CHIEF JUDGE BUMB: Okay. Well, it may be a  
15 conversation I have offline with Judge Vanaskie, because it  
16 just seems to me that -- and maybe instead of narrowing, it  
17 should be picked. And all of this, you know, preliminary  
18 discussion should happen before they're "picked." Because it  
19 seems to me it's a lot of work for Judge Vanaskie to continue  
20 to go back and forth and address these issues. But let's see.  
21 Let's see what these two cases, what they say.

22 MR. NIGH: Yes, Your Honor.

23 JUDGE VANASKIE: Yeah. Get back to me by Monday on  
24 Plaintiffs' position with respect to Bonmon and Lee. And if  
25 you can agree, well, now we have our pool. All right.

1 MR. NIGH: We will, Your Honor.

2 MR. HARKINS: Thank you, Your Honor.

3 MS. KAPKE: Your Honor, apologies for bringing this  
4 up. But, Daniel, can you get back to us on Monday as to  
5 whether you will dismiss Walmart from Lee as well?

6 MR. NIGH: If that's one of the cases, yes.

7 MR. JANOW: And forgive me, Your Honor, Jonathan  
8 Janow from Buchanan Ingersoll on behalf of Defendant  
9 Albertsons. We are the pharmacy defendant named in the  
10 Weygandt case. And just to sort of set the record clear, we  
11 have not yet been asked to take a position on *Lexecon* waiver  
12 issues as our case was not previously selected by the Court.  
13 But we are, you know, we are named as a defendant in that case  
14 and would similarly ask, like Ms. Kapke did, that Plaintiffs  
15 provide their position as to whether they would dismiss  
16 Albertsons from that case for purposes of these discussions.

17 MR. NIGH: Right.

18 MS. DAVIS: And this is D'Lesli Davis for Mckesson.  
19 If we could just have that agreement as to all the downstream  
20 defendants. I don't think we'd have to go through everybody  
21 sort of articulating which of those four cases we're in. But  
22 if we could hear from you on that, Mr. Nigh, that would be  
23 helpful as well.

24 MR. NIGH: Yeah. And just to be clear, we, the  
25 plaintiffs, have always asserted that we believe we have

1     rightful claims against these downstream defendants. This is  
2     merely a weighing pros and cons with the plaintiffs where in  
3     some situation we are willing to dismiss the pharmacy and/or  
4     the wholesaler so that these cases can be tried in New Jersey.

5             MS. DAVIS: And, Your Honor --

6             CHIEF JUDGE BUMB: We got to get to trial. We got to  
7     get to trial. Let's get there. Okay.

8             MS. DAVIS: Thank you, Your Honor.

9             MR. NIGH: We agree, Your Honor.

10            MR. LAVELLE: Your Honor, John Lavelle from Morgan  
11     Lewis for Aurobindo. I heard Mr. Nigh say again this morning  
12     and Plaintiffs have said this a few times that Aurobindo is  
13     unwilling to waive *Lexecon*. That is not true.

14            As we put in our most recent submission to the Court,  
15     Aurobindo actually made a proposal to Plaintiffs with respect  
16     to *Lexecon* waiver. Plaintiffs made a counterproposal. Neither  
17     side has accepted the initial proposals. There's more  
18     discussion to be had here. For us it's wrapped up in the issue  
19     of personal jurisdiction over the Indian entity which has been  
20     sued by the plaintiffs. So we're willing to continue  
21     discussions with Plaintiffs to see if we can reach a resolution  
22     of that. But I don't think it's fair to say that we have  
23     refused to waive *Lexecon*. It's the contrary. We've expressed  
24     willingness to waive it under certain circumstances, and we  
25     want to have those discussions with Plaintiffs.

1 MR. NIGH: Your Honor, we've discussed this  
2 previously. I don't want go into the whole detail.

3 JUDGE VANASKIE: Right.

4 MR. NIGH: But putting strings on a *Lexecon* waiver is  
5 essentially tantamount to refusing to waive *Lexecon*. We've  
6 made an offer. It was rejected. We've never even received a  
7 counterproposal from the defendants. So at this point we've  
8 got to get cases, we've got to move on, we've got to get them  
9 into the pool.

10 You know, putting strings on saying we'll only waive  
11 *Lexecon* if X, Y and Z happens, that's tantamount to saying  
12 you're not waiving *Lexecon*.

13 JUDGE VANASKIE: Well, we don't have those issues  
14 with respect to Bonmon and Lee, do we?

15 MR. HARKINS: No.

16 MR. NIGH: No, Your Honor.

17 JUDGE VANASKIE: So give me your position by Monday  
18 with respect to Bonmon and Lee and maybe this will go away for  
19 now. I know it will come up again, Mr. Lavelle, if you can't  
20 all work it out. But I just want to get the cases selected and  
21 moving forward towards trial.

22 MR. NIGH: Yes, Your Honor.

23 MR. HARKINS: Understood.

24 JUDGE VANASKIE: Now, I have -- I show pending  
25 ECF 2866, motion to clarify with respect to -- is it

1 Dr. Nagaich? I'm probably mispronouncing that name. But where  
2 do things stand with respect to that motion?

3 MS. BRANCATO: Good morning, Your Honor. This is  
4 Alexia Brancato on behalf of Torrent.

5 JUDGE VANASKIE: Okay.

6 MS. BRANCATO: I'm sorry. Can you hear me?

7 JUDGE VANASKIE: Yes, I can.

8 MS. BRANCATO: Okay. Perfect.

9 Yes. That motion is still pending. It was related  
10 to the economic loss trial we were working up and has, I guess,  
11 similarly been put on pause.

12 JUDGE VANASKIE: All right. So can it remain on  
13 pause?

14 MS. BRANCATO: For now I think, Your Honor, that's  
15 fine with us. If we were going to pick up economic loss issues  
16 again, then it would need to become unpaused, if you will.

17 JUDGE VANASKIE: Right.

18 MS. BRANCATO: But for now, we're not asking for an  
19 immediate ruling or anything like that.

20 JUDGE VANASKIE: All right.

21 MR. OSTFELD: Judge Vanaskie, this is Greg Ostfeld.

22 JUDGE VANASKIE: Yes, Mr. Ostfeld.

23 MR. OSTFELD: On that point, it's not on the agenda  
24 today, and we're certainly not looking for any action on it  
25 today, but I did want to simply raise the point that Teva has a



1 letter outstanding that's been responded to and replied to.  
2 It's Docket Nos., let's see, 2916, 2921, and 2934 pertaining to  
3 the TPP litigation and, you know, and some suggestions as to  
4 next steps in response to Judge Bumb, your questions in October  
5 regarding where we go from here. So we're certainly not  
6 looking for any action on that today. We were wondering if  
7 Your Honor needs anything further from us on that. We'd  
8 certainly be happy to provide it.

9 CHIEF JUDGE BUMB: Well, I -- so thank you.

10 I'm glad you brought it up, because I am working on  
11 stuff. It will probably be a lengthy opinion that I think will  
12 help, I hope, give clarity to that aspect of this matter.

13 It's no secret to all of you that that has consumed a  
14 lot of my time and a lot of my consternation. So I've been  
15 thinking a lot about the case, and you can expect to get an  
16 opinion and some rulings with respect to that aspect of the  
17 case.

18 So I guess to answer your question, hold on for a  
19 little bit.

20 MR. OSTFELD: Understood, Your Honor. Thank you.

21 CHIEF JUDGE BUMB: Okay.

22 JUDGE VANASKIE: All right. So we have some cases --  
23 we have one case being worked up right now, Roberts. We have  
24 three other cases that have been selected. There's no problems  
25 with moving forward with them. And then we're going to find

1 out by Monday what the other two cases are.

2 Can we set up schedules for the preparation of those  
3 cases for trial?

4 MR. NIGH: Yes, Your Honor.

5 JUDGE VANASKIE: Is there any impediment to that?

6 MR. NIGH: No. I think we can start those  
7 negotiations, Your Honor. This is Daniel Nigh for the  
8 Plaintiffs.

9 MS. DAVIDSON: We're happy to meet and confer with  
10 Plaintiffs on that. Could the Court provide a little bit of  
11 perhaps guidance on when you see that trial happening and then  
12 we'll work backwards from there?

13 CHIEF JUDGE BUMB: Don't we have a trial date?

14 JUDGE VANASKIE: We have a trial date for Gaston  
15 Roberts but not for anything else. Roberts is September 8th, I  
16 think.

17 CHIEF JUDGE BUMB: And how long? How long do the  
18 parties think that case will try?

19 MR. SLATER: We have not discussed that with the  
20 defendants yet.

21 CHIEF JUDGE BUMB: Okay. So give me an idea, and  
22 then the next time we talk, I will have an idea when the next  
23 trial will happen, okay? That's the best I can do. I've got  
24 to know how long you folks think the first trial, the Roberts  
25 trial will last.

1 MR. SLATER: I think once we know how many experts  
2 there are on each side and we know what the issues are, I think  
3 that we can give you a more responsible answer to that. I  
4 would hate to just shoot from the hip and give you a broad  
5 number unless you want that, Your Honor.

6 CHIEF JUDGE BUMB: Oh, yeah, no, I don't want you  
7 shooting from the hip. I want a realistic number.

8 MR. SLATER: Okay.

9 CHIEF JUDGE BUMB: Because then I typically get the  
10 realistic number and then I usually reduce it.

11 MR. SLATER: Right.

12 MS. DAVIDSON: You shouldn't tell us, Your Honor,  
13 because then people will be inclined to inflate it.

14 (Laughter.)

15 CHIEF JUDGE BUMB: Well, I'll know.

16 MR. SLATER: Nobody's inclined to inflate it on the  
17 plaintiffs' side.

18 CHIEF JUDGE BUMB: Okay, Mr. Slater. Holding you to  
19 it.

20 What's the trial date I gave you folks? I'm just  
21 looking at my calendar here. I want to make sure it's in.

22 MR. SLATER: I think it's September 8.

23 JUDGE VANASKIE: I had September 8th.

24 CHIEF JUDGE BUMB: Yeah. Okay. Yeah, it's in.  
25 Okay.

1 MS. DAVIDSON: Your Honor, I understand you need to  
2 know the approximate length of trial, but is it fair to assume  
3 you're thinking of more or less back to back such that this  
4 would be in the fourth quarter of 2025?

5 CHIEF JUDGE BUMB: Yes. I think you can, yes. I'm  
6 contemplating what my trial calendar looks like. Barring any  
7 criminal trial that I don't know of, yes.

8 MS. DAVIDSON: Thank you. That's fine.

9 CHIEF JUDGE BUMB: Yeah. I do anticipate that I want  
10 to get as much as I can done this calendar year, yes.

11 MR. HARKINS: Apologies, Your Honor. I just want to  
12 make sure I'm understanding. When you say "back to back," are  
13 you referring to the case that will be selected from the Wave 2  
14 pool?

15 CHIEF JUDGE BUMB: The next one, yes.

16 MR. HARKINS: Okay. And I just clarify because I  
17 know the parties, who, again, are still trying to identify the  
18 case, had been of the understanding that the target date for  
19 that trial would be February or March of 2026.

20 CHIEF JUDGE BUMB: Why?

21 MR. HARKINS: It was simply the tentative date that  
22 was given to us by Judge Vanaskie at the end of last year to  
23 work backwards from. And I -- I just hesitate to let that go.  
24 Because I know, for example, for the Roberts trial, expert  
25 workup, fact discovery and such are already underway.

1 CHIEF JUDGE BUMB: Yeah.

2 MR. HARKINS: But given what we were informed about  
3 with regard to the tentative trial date, none of that has  
4 started for the Wave 2 cases which, as you're aware from the  
5 discussion today, have not even been selected.

6 CHIEF JUDGE BUMB: Well, I know, but isn't that what  
7 we're talking about now, setting down a schedule so that you  
8 can, you know, you can work sort of backwards? If I tell you,  
9 for example, let's do the second trial in November, can't you  
10 work backwards? Isn't that enough time?

11 MR. HARKINS: And, yes, Your Honor, I just wanted to  
12 clarify because of what the parties had previously been working  
13 off of. This is the first I'm hearing of a fourth quarter  
14 trial for the Wave 2. And our discussions, which have  
15 admittedly not gotten into the weeds on the schedule, had been  
16 with that as the target date for purposes of getting discovery  
17 and other deadlines situated.

18 CHIEF JUDGE BUMB: Okay. Yeah. I mean, I would like  
19 to do more than just the one this calendar year, again,  
20 barring -- I mean, I can't control my criminal calendar. But  
21 as of now I have the time.

22 MS. DAVIDSON: Thank you, Your Honor.

23 MR. HARKINS: Okay. Thank you.

24 MS. DAVIDSON: Your Honor, I think in terms of trial  
25 readiness, one consideration for sure would be at what stage of

1 the workup does the pool get narrowed, right? Because  
2 preparing five cases for trial in November is a much bigger  
3 task.

4 So I'm not sure where we stand on sort of when in the  
5 process Your Honor envisions the five going to one, if that  
6 makes sense.

7 CHIEF JUDGE BUMB: No. Try it again.

8 MS. DAVIDSON: So at this point, right, we would be  
9 preparing five cases in Wave 2 for trial. And so one thing  
10 that has been done in some other MDLs I've been in, right, is  
11 there's a first level of discovery that's limited, then the  
12 trial case is selected such that you're not working all five  
13 cases up for a November trial, which would be a much bigger  
14 burden.

15 CHIEF JUDGE BUMB: Right.

16 MS. DAVIDSON: So I didn't know if Your Honor and  
17 Judge Vanaskie had a plan in place as to at what stage the five  
18 would be further narrowed.

19 CHIEF JUDGE BUMB: Why don't we -- can we agree on  
20 this, Judge Vanaskie, why don't we hear from the parties and  
21 get a proposal. You know what my objective is. My objective  
22 is to try as many as I can this calendar year because I have  
23 the time, okay. And so why don't the parties propose a  
24 schedule. And if it's something that I think can fit within my  
25 calendar and it's all doable for the parties, then we'll work

1 from that. How does that sound?

2 MR. SLATER: That works for the parties, Your Honor.

3 MR. HARKINS: Yes, Your Honor.

4 CHIEF JUDGE BUMB: All right.

5 JUDGE VANASKIE: What I would suggest is you make  
6 that proposal by our next case management conference scheduled  
7 for March 3rd, all right?

8 MR. SLATER: If not sooner.

9 JUDGE VANASKIE: If not sooner.

10 CHIEF JUDGE BUMB: And it's also very helpful for me  
11 so that I can reserve the time on my calendar. Okay.

12 MS. LOCKARD: Yeah. I would suggest, and it sounds  
13 like Mr. Slater is of the same mind, that we try to get our  
14 proposals in sooner than that. Because if we're just making  
15 proposals in March, we're going to lose, you know, a month.  
16 And the clock is ticking. We want to get some certainty on  
17 what needs to be worked up, how the schedule is going to go so  
18 we could start getting that discovery underway.

19 CHIEF JUDGE BUMB: Well, I think the --

20 JUDGE VANASKIE: How about by February 14th?

21 CHIEF JUDGE BUMB: Yeah. As soon as you get it to  
22 Judge Vanaskie and I speak with Judge Vanaskie, he can get back  
23 to you as to what my thinking is.

24 MR. SLATER: We can target that, Your Honor.

25 JUDGE VANASKIE: All right.

1 MS. LOCKARD: Okay.

2 JUDGE VANASKIE: So I'd suggest a letter report by  
3 February 14th, to the extent that you can reach agreement on  
4 what should be tried after Roberts, all right?

5 MR. SLATER: Will do.

6 JUDGE VANASKIE: Give us an order. Okay.

7 All right. Is there anything else for today?

8 MR. HARKINS: Nothing from Defendants, Your Honor.

9 MR. SLATER: I don't think there's anything else that  
10 has to be addressed today, Your Honor, for Plaintiffs.

11 JUDGE VANASKIE: I take it there are presently no  
12 discovery disputes?

13 (No response.)

14 CHIEF JUDGE BUMB: What?

15 MR. SLATER: With regards to Roberts itself?

16 JUDGE VANASKIE: Yeah, with regard to Roberts.

17 MR. SLATER: I'm not aware of any, Your Honor. I  
18 don't know if Daniel is.

19 MR. NIGH: None, Your Honor. None that we're aware  
20 of.

21 JUDGE VANASKIE: Great.

22 CHIEF JUDGE BUMB: Great.

23 JUDGE VANASKIE: All right. I'll look forward to  
24 getting your letters, and we'll all get back together on the  
25 3rd of March.



1 CHIEF JUDGE BUMB: Good to see you all.

2 MR. SLATER: Thank you.

3 JUDGE VANASKIE: Thank you.

4 MR. HARKINS: Thank you.

5 MR. NIGH: Thank you.

6 MR. SLATER: See you, Judge.

7 MS. DAVIDSON: Thank you.

8 JUDGE VANASKIE: Bye-bye.

9 MR. SLATER: Bye.

10 (Proceedings concluded at 10:52 a.m.)

11 - - - - -  
12 **FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE**  
13 - - - - -

14 I certify that the foregoing is a correct transcript  
15 from the record of proceedings in the above-entitled matter.

16  
17 /S/John J. Kurz, RDR-RMR-CRR-CRC

February 1, 2025

18 Court Reporter/Transcriber  
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<p><b>CHIEF JUDGE BUMB:</b> [60] <b>JUDGE VANASKIE:</b> [95] <b>MR. HARKINS:</b> [25] 7/6 20/16 21/1 21/3 21/14 21/23 23/5 24/23 25/2 25/14 29/10 29/25 33/21 37/2 39/15 39/23 44/11 44/16 44/21 45/2 45/11 45/23 47/3 48/8 49/4 <b>MR. JANOW:</b> [1] 37/7 <b>MR. KAPLAN:</b> [2] 27/9 28/13 <b>MR. LAVELLE:</b> [1] 38/10 <b>MR. NIGH:</b> [26] 20/4 20/7 20/13 20/23 32/25 33/3 33/14 33/20 34/16 34/24 35/18 36/7 36/22 37/1 37/6 37/17 37/24 38/9 39/1 39/4 39/16 39/22 42/4 42/6 48/19 49/5 <b>MR. OSTFELD:</b> [3] 40/21 40/23 41/20 <b>MR. SLATER:</b> [48] 7/1 7/21 8/11 9/20 10/3 10/19 10/24 12/19 12/21 12/25 13/3 13/5 13/21 14/16 14/21 15/3 15/5 16/24 18/5 19/19 19/22 19/24 20/2 21/2 23/23 24/22 24/24 26/6 26/10 26/14 28/1 32/24 42/19 43/1 43/8 43/11 43/16 43/22 47/2 47/8 47/24 48/5 48/9 48/15 48/17 49/2 49/6 49/9 <b>MS. BRANCATO:</b> [5] 40/3 40/6 40/8 40/14 40/18 <b>MS. 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ROSE:</b> [4] 9/6 9/12 9/22 12/11 / /S/John [1] 49/17 <b>0</b> <b>07068</b> [1] 1/15 <b>07102</b> [1] 3/15 <b>08043</b> [1] 2/18 <b>08101</b> [1] 1/8</p>	<p><b>08540</b> [1] 2/24 <b>1</b> <b>10</b> [1] 19/23 <b>100</b> [1] 3/15 <b>1000</b> [1] 4/3 <b>10001</b> [1] 2/10 <b>1001</b> [1] 4/6 <b>10022</b> [1] 2/21 <b>1025</b> [1] 2/17 <b>103</b> [1] 1/15 <b>10:52 a.m</b> [1] 49/10 <b>11</b> [1] 3/19 <b>11th of</b> [1] 9/10 <b>128</b> [1] 2/9 <b>14</b> [1] 2/3 <b>1440</b> [1] 2/13 <b>14th</b> [2] 47/20 48/3 <b>14th of</b> [1] 20/21 <b>15219</b> [1] 3/3 <b>15th</b> [2] 3/15 28/9 <b>16</b> [1] 18/14 <b>17</b> [1] 30/14 <b>1700</b> [1] 4/16 <b>1801</b> [1] 4/3 <b>1:19-md-02875-RMB-SAK</b> <b>K</b> [1] 1/4 <b>2</b> <b>20</b> [1] 14/1 <b>20004</b> [1] 4/6 <b>20005</b> [1] 2/14 <b>20006</b> [1] 4/16 <b>20016</b> [1] 2/4 <b>2021</b> [1] 22/6 <b>2025</b> [3] 1/8 44/4 49/17 <b>2026</b> [1] 44/19 <b>207</b> [1] 1/15 <b>2200</b> [1] 4/9 <b>2220</b> [1] 4/13 <b>230</b> [1] 4/13 <b>230</b> [1] 4/13 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